INDUSTRIAL TRUST CO. ET AL., EXECUTORS, *v.* UNITED STATES.

CERTIORARI TO THE COURT OF CLAIMS.

No. 213. Argued November 22, 1935.—Decided December 9, 1935.

1. Acts of Congress must be construed, if possible, so as to avoid grave doubts of their constitutionality. P. 221.
2. A life insurance policy taken out in 1892 by the insured and paid up in 1912, was payable to others if they survived him but otherwise to his estate. No power was reserved in him to change beneficiaries, borrow on the policy or surrender it. The others survived him when he died in 1930. *Held*: That § 302 (g), Revenue Act 1926, which is the same as § 402 (f), Revenue Act 1918, may not be construed as making the amount receivable by the beneficiaries a part of the gross estate; notwithstanding subdivision (h) of § 302 of the 1926 Act, which declares that subdivision (g) of that section, along with others, shall apply to "transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act." *Bingham* v. *United States*, *ante*, p. 211. Pp. 221–222.

80 Ct. Cls. 647; 9 F. Supp. 817, reversed.

CERTIORARI * to review a judgment dismissing a petition in a suit to recover an amount exacted as part of an estate tax.

Mr. Charles P. Taft for petitioners.

Mr. David E. Hudson, with whom *Solicitor General Reed*, *Assistant Attorney General Wideman*, and *Mr. Sewall Key* were on the brief, for the United States.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

Petitioners, as executors of the estate of William M. Greene, who died in 1930, filed an estate-tax return and

* See Table of Cases Reported in this volume.

paid the amount of the federal estate tax disclosed thereby. A paid-up life-insurance policy of $42,000 was omitted from the return. The Commissioner of Internal Revenue declared a deficiency and included the amount of this policy in the gross estate. Petitioners filed a claim for refund, which was rejected by the commissioner. Thereupon, this proceeding was brought in the Court of Claims to recover the amount of the claim. That court held against the right to recover and dismissed the petition.

The policy, issued in 1892, promised to make payment to the wife of the decedent, as sole beneficiary if living; and if not living, to the surviving children of the decedent; and, in the event of none surviving, then to the executors, administrators, or assigns of the decedent. In 1912, the policy became a paid-up policy requiring no further payment of premiums. No power was reserved to change beneficiaries, borrow on the policy or surrender it. The wife of the decedent predeceased him; but he was survived by three children, to whom the proceeds of the policy were paid upon his death.

The case of *Lewellyn* v. *Frick,* 268 U. S. 238, arose under the Revenue Act of 1918. This case arises under the act of 1926, § 302 (g), which is the same as § 402 (f) of the former act. Subdivision (h) of the 1926 act; however, provides that subdivisions (b), (c), (d), (e), (f), and (g) shall apply to "transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act." Whether any of these terms apply to an amount receivable by a beneficiary, under a policy such as we have here, is fairly debatable. See *Wyeth* v. *Crooks,* 33 F. (2d) 1018, 1019. If any of them do apply, the provision is open to grave doubt as to its constitutionality, and the rule of the *Frick* case controls.

The foregoing facts bring the case clearly within our decision just announced in *Bingham* v. *United States*, *ante*, p. 211; and the judgment of the court below is accordingly

Reversed.

ALEXANDER ET AL., RECEIVERS, *v.* HILLMAN ET AL.*

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Nos. 15 and 16. Argued October 17, 18, 1935.—Decided December 9, 1935.

In a suit in the District Court in which receivers were appointed to collect and distribute the assets of a corporation, claims were filed by individuals who as directors and officers had controlled and dominated the corporation's affairs, and by other companies, also controlled and used by them. In response to the claims, the receivers filed in the same court an ancillary bill, separately numbered but not praying process, in which they set up counterclaims for the value of assets of the corporation which they averred the individual claimants fraudulently and in violation of their duties as officers and directors had, through complicated transactions, converted to the use of themselves and the two corporate claimants. Upon being served by mail with copies of the ancillary bill and an order directing them to plead to it, the claimants appeared specially and moved to quash upon the ground that they were inhabitants of another State, within the purview of § 51, Jud. Code. *Held:*

1. The court had jurisdiction of the subject matter—the claims and counterclaims. P. 237.
2. The ancillary bill, while in form not inappropriate for the commencement of a suit, served as a pleading in the main suit, to put the claimants to proof of their claims and to assert the right of the receivers to affirmative relief. P. 239.

---

* The respondents in this case were: J. H. Hillman, Jr., A. B. Sheets, Thomas Watson, Hillman Coal & Coke Co., and Hecla Coal and Coke Co.